

**GUARDIANS OF ADULTS
GUARDIANS AD LITEM
COURT APPOINTED ATTORNEYS
GUARDIAN REVIEWS**

I GUARDIANS OF ADULTS – MCL 700.5301 et seq., MCR 5.401 et seq.

A. Definitions - MCL 700.1105(a) and (i)

B. Alternatives – MCL 700.5303(2)

C. Petition –MCL 700.5303(1)

D. Notice – MCL 700.5311, MCR 5.125(A) and (C)(22)
MCL 700.5104
MCR 5.402(C), MCR 5.126

E. Temporary Guardians – MCL 700.5312, MCR 5.403(C)

F. Independent Medical Exam – MCL 700.5304, MCR 5.405(A) & (C)

G. Hearing – MCL 700.5304, MCR 5.405(B)

H. Findings – MCL 700.5306

I. Priority – MCL 700.5313

J. Powers & Duties – MCL 700.5314, MCL 700.5315, MCL 700.5316,
MCL 700.5306(2), MCR 5.409(A)

K. Modification & Termination– MCL 700.5308, MCL 700.5310,
MCR 5.408(B)

II GUARDIANS AD LITEM – MCL 5303(3), MCL 700.5305,
MCL 700.1403(d), MCR 5.121, MCR 5.408

A. Appointment – MCL 700.5305(3) and (4)

A. Required – MCL. 700.5303(2)

B. Patient Rights – MCL 700.5304

B. Duties – MCL 700.5305, MCR 5.121

C. Trials – MCR 5.001(A)

C. Immunity – MCL 691.1407(6) (PA 143 of 1996)

D. Privilege – MCR 5.121(E)

E. Report – PC 627 700.5309, MCR 5.408

F. Termination – MCL 700.5305(5)

G. Compensation – MCL 700.5305(2)

III COURT APPOINTED ATTORNEYS

A. Appointment – MCL 700.5305(3) and (4)

B. Patient Rights – MCL 700.5304

C. Trials – MCR 5.001(A)

IV GUARDIAN REVIEWS

A. 1/3 rule – MCL 700.5309, MCR 5.408

B. Report

C. Attorney Appointed

STATE OF MICHIGAN PROBATE COURT COUNTY CIRCUIT COURT - FAMILY DIVISION	ACCEPTANCE OF APPOINTMENT AND REPORT OF GUARDIAN AD LITEM OF ALLEGED INCAPACITATED INDIVIDUAL	FILE NO.
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In the matter of _____, alleged incapacitated individual

1. I have been appointed by the court as guardian ad litem, and I accept this appointment.
2. I have performed the duties required by statute (see reverse side for list of duties).

3. I visited the alleged incapacitated individual on _____ at _____
Date Location

and, to the extent that the individual could comprehend, explained the nature, purpose, and legal effects of a guardian's appointment and otherwise complied with each provision of MCL 700.5305(1).

4. I report to the court as follows:

- ☐ a. the alleged incapacitated individual wishes to:
- ☐ have limits placed on the guardian's powers. ☐ object to the appointment of the nominated guardian.
- ☐ contest the petition.

☐ b. There is a disagreement or dispute related to the guardianship, namely _____

I believe it ☐ might ☐ will not be resolved through court ordered mediation.

☐ c. There are one or more appropriate alternatives to a full guardianship, namely:

☐ 1) appointment of a limited guardian with the following powers: _____

☐ 2) appointment of a conservator or a written protective order.

☐ 3) the alleged legally incapacitated individual executing one of the following:

- ☐ a patient advocate designation
☐ a durable power of attorney

☐ d. The alleged incapacitated individual asserts the following rights:

- ☐ to be present at the hearing. ☐ to have an attorney appointed.

☐ e. I believe it is in the best interests of the individual to have legal counsel because _____

☐ The individual will retain legal counsel. ☐ I recommend the court appoint legal counsel.

5. ☐ One or more items in item 4a above are demanded and no further report or recommendation is needed.

OR

☐ The petition is not being contested and I further report to the court and recommend as follows:

(please write the report and recommendation separately)

Date _____

Signature _____

Address

Name (type or print) _____

City, state, zip

Telephone no.

Do not write below this line - For court use only

DUTIES OF GUARDIAN AD LITEM

Your duties as guardian ad litem include all of the following:

1. Visit the individual alleged to be incapacitated.
2. Explain to the individual the nature, purpose, and legal effects of the appointment of a guardian.
3. Explain to the individual the hearing procedure and the individual's rights in the hearing procedure, including but not limited to:
 - a. the right to contest the petition.
 - b. the right to request limits on the guardian's powers.
 - c. the right to object to a particular person being appointed guardian.
 - d. the right to be present at the hearing.
 - e. the right to be represented by legal counsel and that legal counsel will be appointed for the person if s/he is unable to afford legal counsel.
4. Inform the individual of the name of any person known to be seeking appointment as guardian.
5. Make determinations and inform the court of those determinations, on all of the following:
 - a. whether the individual alleged to be incapacitated wishes to be present at the hearing.
 - b. whether the individual alleged to be incapacitated wishes to contest the petition.
 - c. whether the individual alleged to be incapacitated wishes limits be placed on the guardian's powers.
 - d. whether the individual alleged to be incapacitated objects to a particular person being appointed guardian.
 - e. whether there are one or more appropriate alternatives to the appointment of a full guardian after considering:
 - i. appointment of a limited guardian, including the specific powers and limitation on those powers the guardian ad litem believes appropriate.
 - ii. appointment of a conservator or another protective order under 700.5401 et seq.
 - iii. execution of a patient advocate designation, do-not-resuscitate declaration, or durable power of attorney with or without limitations on purpose, authority or duration.
 - iv. available support from family members. Family members may often take on the responsibility for the care of an individual. Also, if the individual should be diagnosed as having a reduced life expectancy due to an advanced illness, state law allows for a member of the individual's immediate family or next of kin to make informed decisions regarding the individual receiving, continuing, discontinuing and refusing medical treatment and may choose palliative treatment and adequate and appropriate pain and symptom management.
 - f. whether a disagreement or dispute related to the guardianship petition might be resolved through court ordered mediation.

INSTRUCTIONS FOR ADULT GUARDIAN REVIEWS

(REVISED 11/05)

1. Review the applicable statutes and court rules. It is requested that if your report is computer generated, that the font size used is no smaller than "10" as the document is reduced when microfilmed.
2. It is suggested that you mail a copy of your order appointing to the guardian so he or she will be anticipating a call from you. Establish the whereabouts of the ward via a phone call to the guardian or facility prior to your visit. If it is determined that the ward is residing **OUTSIDE** of the Macomb County area, **please contact the court** prior to taking any action.
3. If the ward is determined to be deceased, note this on your order of appointment and return to the court. No billing is permitted in this situation.
4. Visit (or attempt to visit) the ward at his/her usual place of abode. If you are **UNABLE** to visit or contact the ward, **please contact the court**.
5. Make an independent determination of the ward's ability or lack of ability to make informed decisions as to personal care, etc. Determine whether there is a continuing need for the guardianship, whether it should be modified, or whether it should be terminated.
6. Complete and file with the court your original signed report on or before the due date. You should use Form PC 636 for this purpose. A copy of the report must also be mailed to the guardian.
7. In all cases you must first bill the guardian or conservator for payment, using a billing which in addition to containing the court file name and file number, must contain the language below or similar:

"This fee is to be paid out of the assets and/or income of the ward. If the assets and/or income of the ward is insufficient to pay this fee, then please return this invoice with a written notation thereon that 'the Estate is without funds to pay this invoice', and date and sign same".
8. **The maximum fee allowed for review is \$100.00.** A copy of your billing **MUST** accompany the original report filed with the court. Send the report and copy of the billing to the attention of the Administrative Secretary. Your report **will not be accepted without the billing copy**.
9. If the guardian or conservator indicates the ward is indigent, notify the Administrative Secretary so payment may be obtained from the County.
10. The public will perceive you as a representative of the court and as always you should conduct yourself in a courteous and professional manner. To monitor the effectiveness of this program, the court is randomly surveying guardians regarding the review.

If need to contact the court or have any questions regarding your assignments please call:

Rachel Hull
Typist Clerk – Mental Div.
586.469.7184

Valerie Schave
Administrative Secretary
586.469.5501

Macomb County Probate Court
21850 Dunham Road
Mount Clemens, MI 48043
586.469.5290

**MACOMB COUNTY PROBATE COURT
WILLS & ESTATES DIVISION**

INSTRUCTIONS FOR GUARDIAN AD LITEM REPORTS

1. Establish the whereabouts of the ward. If it is determined that the ward is residing outside of Macomb County, please contact the Assignment Clerk prior to taking any action. If you will not be able to timely complete the visit and report (submitted 7 days prior to hearing date), please notify the Assignment Clerk immediately.
2. If the ward is deceased, note this on your order of appointment and return the order to the Assignment Clerk. No billing is permitted in this situation.
3. If the petitioner indicates the petition(s) is dismissed, advise the Assignment Clerk and do not take any action. No billing is permitted in this situation.
4. Complete and file with the court an **original SIGNED report form** for each of the guardianship and conservatorship file at least **SEVEN DAYS PRIOR TO THE HEARING DATE**. If you are using your own forms, they must substantially comply with the court forms.
5. You are expected to visit the ward. The GAL must (1) visit the proposed ward, (2) explain the nature, purpose and legal effects of the appointment of a guardian/conservator as well as his or her rights at the hearing, (3) inform the proposed ward of the name of the person(s) seeking the appointment as guardian, and (4) submit a report to the court.
6. **Regardless of whether it is a guardianship or a conservatorship, obtain INFORMATION REGARDING THE ASSETS OF THE WARD AND THE EXISTENCE OF ANY ESTATE PLANNING DOCUMENTS.** Irrespective of paragraph 5, Form PC39a indicating that no report and recommendation is necessary if the petition is contested, please provide a report and recommendation as you normally would. It is NOT NECESSARY for you to appear on the hearing date unless the Judge or counsel request.
7. An appropriate investigation and written report(s) is contemplated to take 1.0 to 2.0 hours, exclusive of travel time. It is anticipated that **fees will not exceed \$200.00 per ward**, not per file, however extenuating circumstances may result in higher fees which may be billed upon prior court approval.
8. Except in the above-mentioned extenuating circumstances, you must first bill the petitioner, guardian, or conservator for payment. Your statement must clearly indicate where the statement is sent, the court file name(s) and court file number(s). Please include in your billing the following language:

"This fee is to be paid out of the assets and/or income of the ward. If the assets and/or income of the ward is insufficient to pay this fee, then please return this invoice with a written notation thereon that 'the estate is without funds to pay this invoice', and date and sign same."

If the guardian or conservator indicates the ward is indigent, submit a copy of your statement (with the above notation) to the Assignment Clerk requesting payment from the county. The county will pay a maximum of \$150.00.
9. A copy of your billing **MUST** accompany the GAL Report filed with the court. Your report will not be accepted without the billing copy.
10. You are a representative of the court and should present yourself and conduct yourself in a courteous and professional manner.
11. If you are appointed GAL for a settlement involving a minor, you will receive additional instructions by separate cover.